

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**POWERHOUSE CULTURAL
ENTERTAINMENT, INC.**

and

**Case 29-CA-271135
29-RC-271113**

BOOK WORKERS UNITED

Marcia Adams, Esq.,
for the General Counsel.

Neil Jacobs, Esq.,
for the Respondent.

Seth Goldstein, Esq.,
for the Charging Party Union.

DECISION

STATEMENT OF THE CASE

BENJAMIN W. GREEN, Administrative Law Judge. This case concerns the Respondent's alleged discriminatory discharge of employees William Luckman and Madison Morales because of their union activities. In many cases, employees are discharged in violation of Section 8(a)(3) of the National Labor Relations Act (the Act) shortly after they engage in union activity. Here, the union activity of Luckman and Morales, in early-January 2021, was a reaction to an already deteriorating employment relationship. On November 24, 2020,¹ Respondent owner Daniel Power advised one of Luckman's potential replacements, "I have an idea, about firing Will" and was "[g]onna get rid of Madison too . . ." (R. Exh. 10) On December 28 and 29, Power met with Morales and Luckman, respectively, to discuss whether they would continue working for the Respondent and, if so, in what capacity (i.e. training their replacements and working as independent contractors). These events occurred before the two employees sought to unionize. The General Counsel failed to establish that the Respondent did anything other than lawfully follow through on a course of action Power decided upon before the two employees engaged in any union activity. As explained in greater detail below, I do not find that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Luckman and Morales.

In addition to the 8(a)(3) discharge allegations, the General Counsel contends that the Respondent, by Power, violated Section 8(a)(1) of the Act, on January 5, 2021, by (1) informing employees that it would be futile for them to select a union as their bargaining representative because "there would be no union" and (2) interrogating employees regarding their union activities. As explained in greater detail below, I find that the Respondent violated Section 8(a)(1) of the Act as alleged.

¹ All dates herein refer to 2020, unless stated otherwise.

In addition to the unfair labor practice case, this consolidated matter concerns the Respondent's challenges to the election ballots of Luckman and Morales on the grounds that they were no longer employed by the Respondent. (G.C. Exh. 1(G)) Pursuant to a stipulated election agreement in 29-RC-271113, a mail ballot election was conducted in the following unit (U. Exh. 4):²

Included: All full-time and regular part-time employees.

Excluded: All accountants, independent contractors, confidential employees, managerial employees, and guards and supervisors as defined in the Act.

Three votes were cast of approximately four eligible voters and all three votes were challenged.³ On April 29, 2021, the Regional Director for Region 29 ordered that the Respondent's challenges to the ballots of Luckman and Morales be consolidated with the unfair labor practice complaint for hearing.⁴ (G.C. Exh. 1(G)) The stipulated election agreement provided that unit employees were eligible to vote if they were employed during the payroll period ending December 20. (U. Exh. 4) The Respondent stipulated that Luckman and Morales were employed during that payroll period. (Tr. 16) However, as stated in the stipulated election agreement, "ineligible to vote are . . . employees who have quit or been discharged for cause after the designated payroll period for eligibility." (U. Exh. 4) The Respondent contends that Luckman and Morales were lawfully discharged for cause. As I agree with the Respondent in this regard, I shall sustain the Respondent's challenges to the ballots of Luckman and Morales.

This case was tried before me by Zoom video conference on June 15 and 16, 2021. On the entire record, including my observation of the demeanor of the witnesses, and after considering the posthearing briefs that were filed by the General Counsel, the Respondent, and the Union, I make these

² The deadline for voters to return mail ballots to the Regional office was March 19, 2021.

³ Book Workers United (Union) challenged the ballot of creative director Francesca Richer on the grounds that she was an independent contractor, but later withdrew that challenge. (G.C. Exh. 1(G))

⁴ The charge in case 29-CA-171135 was filed on January 8, 2021 and the complaint issued on March 19, 2021. (G.C. Exhs. 1(A), 1(E))

FINDINGS OF FACT⁵**JURISDICTION**

5 The Respondent admits, and I find, the following: During the 12-month period ending February 28, 2021, the Respondent has been a domestic corporation engaged in book publishing with an office and place of business at 32 Adams Street, Brooklyn, New York. The Respondent has sold goods in excess of \$50,000 to entities within the State of New York, which entities themselves sell and distribute goods to enterprises located in states other than the State of New York. The Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. This dispute affects commerce and the Board has jurisdiction pursuant to Section 10(a) of the Act.

ALLEGED UNFAIR LABOR PRACTICES**Background**

20 The Respondent has been a publisher in photobooks, art books, and design books for over 25 years. Power cofounded the company with Craig Cohen.⁶ (Tr. 111–113) Power's wife, Susanne Konig, also works for the Respondent in some capacity. (Tr. 70, 94) Until 2019, Cohen maintained a small ownership interest and was responsible for the day-to-day operations, including book production. (Tr. 114–119) Before the recession of 2008, the Respondent employed 16-19 employees. However, after the recession, the Respondent's revenue steadily fell and payroll was ultimately reduced to just two full-time employees – Luckman and Morales. According to Power, as personnel waned, it became increasingly necessary for employees to perform a variety of tasks and not be limited to a certain area of the business. (Tr. 117–119)

30 Luckman was hired by the Respondent in December 2008. Luckman testified that his title was managing editor and, in that capacity, he was responsible for copy editing, proofreading, and some occasional administrative tasks. When Cohen left in October 2019, Luckman took over his production duties. Luckman testified that, at this time, his responsibilities increased considerably without any corresponding increase in pay or change in title. (Tr. 26–27)

35 ⁵ The Findings of Fact are a compilation of credible testimony and other evidence, as well as logical inferences drawn therefrom. To the extent testimony contradicts the findings herein, such testimony has been discredited, either as in conflict with credited evidence or because it was incredible and unworthy of belief. In assessing credibility, I rely upon witness demeanor. I also consider the context of the witness' testimony, the quality of their recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. sub nom., 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions and witnesses may be credited in part. Indeed, nothing is more common in judicial decisions than to believe some, but not all, of a witness's testimony. *Daikichi Sushi*, supra at 622; *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008) (citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), revd. on other grounds 340 U.S. 474 (1951)).

45 ⁶ In addition to his publishing company, Power owns bookstores. One of the bookstores is located in Brooklyn, New York at Industry City, a business, shopping, and dining complex. (Tr. 129, 157)

Morales was hired by the Respondent in February 2016. She testified that her title was in-house publicist or publicity director and she was responsible for press releases, managing the social media platforms and website, communicating with media for book coverage, and communicating with authors regarding publicity events. (Tr. 85) In early 2020, the Respondent's sales manager left the company and Morales took over some of his functions, including the sale of books to authors. (Tr.85–86, 191)

Luckman and Morales admitted that they at times had disagreements and issues with Power regarding their performance. (Tr. 27–29, 63–64, 67–72, 88, 101–105) (R. Exh. 1, 4, 6, 7) The Respondent has never maintained a practice of issuing written discipline or discharge notices to employees. (Tr. 143–144, 203–205, 211–213)

The Respondent's Dissatisfaction with Luckman and Morales

Power testified that he had several problems with Luckman's performance in 2020. Thus, Luckman did not file copyrights, refused to request certain invoice adjustments from Chinese importers, failed to correct a typographical error on the colophon page of a book, and sent the wrong color profile to the separator for a certain book. Power was particularly upset with Luckman's errors because the Respondent was publishing far fewer books each year than it had in the past. (Tr. 28–29, 33, 63–72, 132–138, 144–145, 155–157)

Power testified that he was unhappy with Morales because she was reluctant to perform work other than public relations and the company was not publishing enough books to employ someone dedicated exclusively to working as a publicist. Power also believed that Morales was too accommodating with regard to author requests for books when it did not have any actual public relations value. (Tr. 101–105, 144–146, 150, 153–157, 205–206)

Power argued with his two employees about the matters described above. Power was particularly upset that Luckman agreed in June to contact certain Chinese importers regarding book valuations in an effort to reduce the tariffs on the books. Then, without notifying Power, Luckman decided not to do what he was told because he believed it was illegal. By the time Power found out that Luckman failed to solicit the invoice adjustments, it was too late to do so. (Tr. Tr. 130–138, 144–146, 155–157) (G.C. Exh. 3)

On November 23, Power and Luckman had an angry exchange about the Chinese customs issue. (G.C. Exh. 3) According to Power, he made the decision to terminate Luckman and Morales that day after his argument with Luckman. (Tr. 146) Power testified as follows regarding the decision (Tr. 146–147):

I wanted to change in '20/'21, and just put 2020 into a grave and bury it. I also was thinking about the drama and the frustration and the personal toll it was taking on me, arguing with Madison and arguing with Will about how I wanted to do things or change. And I realized and a light bulb went off in my head. I said, you know what, they need to go. They need to leave. I'm going to replace them. I will think about how to do that, because I have always tried to help people that are leaving, if they've not done something -- if they haven't stolen -- you know, if they haven't quit, and it's really my decision to force them out, you know, I would do what I could. So I made a decision on the 23rd in my head. You know, I thought about it. I gave it a good two hours.

The Respondent's Arrangements to Replace Luckman and Morales and the Preliminary Union Activity of Luckman and Morales

5 On the evening of November 23, Power spoke to his Industry City bookstore employee Genessee Floressantos about transferring to the Respondent to help artists and authors as an administrative assistant. Power wanted Floressantos to assume some of Morales' responsibilities, including publicity tasks. Floressantos agreed. (Tr. 147, 150, 155)

10 On November 24, Power had a WhatsApp messaging chat with freelance designer Robert Avellan. (R. Exh. 10) Avellan worked for the Respondent at various times since the early-1990s.⁷ (Tr. 149–150) Power contacted Avellan to ask whether he, with creative director Francesca Richer, would assume Luckman's production tasks because, in Power's words, "I have an idea, about firing Will and giving most of his production tasks to Francesca or a combo
15 of you and FR. Editorial is another matter but he doesn't do a lot of that now." During this exchange, Power explained why he was dissatisfied with Luckman. Avellan expressed concern that the new job would involve a lot of work, but Power assured him it would not. Power also told Avellan he was "[g]onna get rid of Madison too tired of her shit" and replace he with a different employee "who is really good." (R. Exh. 10)

20 After this chat with Avellan, on November 24, Power called Richer and asked her to take over production work on large book projects with complicated design. Power told Richer he was restructuring the company and "getting rid" of Luckman and Morales. Power also told Richer that Avellan would be the primary production person, but he wanted her to help with high-end,
25 sophisticated book projects. Richer agreed. (Tr. 151–152)

Power testified that he did not fire Luckman and Morales immediately because he felt sorry for them and, particularly with regard to Morales, wanted to give himself a couple more weeks to determine how to "lessen the blow." (Tr. 146–147, 156–157, 173–174)

30 On November 30, Power sent Luckman and Morales emails requesting that they each prepare an outline of their responsibilities. (G.C. Exh. 4) Power testified that he has always maintained a practice of asking for such lists from employees when they leave the company so he has a handbook to give to the people taking over those tasks. Upon receiving Power's
35 request for lists of their duties, Luckman and Morales suspected that Power was planning to restructure the company. (Tr. 33–37, 86–87, 152–154)

Morales gave Power her task list immediately and Luckman gave Power his task list about a week later. Power testified that he "felt stupid" after receiving these lists because it
40 appeared that Luckman and Morales were wasting a great deal of time. Thus, according to Power, Luckman spent hours each day deleting spam and Morales spent a huge amount of time doing favors for artists, such as sending them old books. Power testified that the Respondent is not a concierge service and should not be sending old books to artists when there is no publicity value in doing so. According to Power, in 2020, he asked Morales to stop excessively
45 accommodating artists, but she refused. (Tr. 153–155)

On December 19, Power had another WhatsApp messaging chat with Avellan. Power said, "Will goes as soon as you are ready . . ." Avellan responded that he was "ready whenever. It seems like now is a good time. Everything is either being delivered, or delayed.

⁷ In about 2005, Avellan moved to Ecuador and has worked remotely thereafter. (Tr. 150)

Nothing new or unfinished except for Cool which seems to be a problem.” Power agreed to give Avellan a pay increase. Power then stated, “Ok we start with Madison getting you log in for S&S portal. Will out next week I think.” Finally, Power told Avellan “we start with this salary in Jan.”⁸ (R. Exh. 10)

In December, Power sent Morales an email with the subject, “the future,” and requested that they meet. (Tr. 88)

On December 28, Power and Morales met at the Industry City food court. Morales’ testimony regarding the meeting can be summarized as follows: Power told Morales she was not happy with her position. Power said he was restructuring the company and wanted to replace her with Floressantos. Power asked Morales to train Floressantos for about a month and offered Morales a new position helping to start a new jigsaw puzzle company. Morales said she enjoyed working in publicity, but did not enjoy the additional responsibilities she obtained after other employees left. Morales said she wanted to continue working in public relations. Morales told Power it would take longer than a month to train Floressantos as Floressantos had no experience in public relations or sales. Power said he would like to transfer Luckman and Morales to freelance contract workers, but did not indicate when that would occur. Power did not tell Morales she was terminated. (Tr. 88–90) On rebuttal, Morales reiterated that she told Power she was still interest in public relations and it was her expectation that she “would be able to work on a few titles that PowerHouse Books was publishing, as well as the new jigsaw company.”⁹ Morales was crying and very emotional during the meeting. (220–221)

Power’s testimony regarding the December 28 meeting with Morales can be summarized as follows: Power told Morales, “your job is over” at the end of the year and explained why. Morales started sobbing. Power told Morales she was not happy and he was not happy. Power said he understood that Morales wanted to be the publicist, but insisted that the company was not producing enough books to employ a full-time publicist. Rather, he needed a “jack of all trades.” Morales asked Power why he was firing her. Power said she should not look at it like that and offered to take some time to think about what to do next year. Power said he had spoken to Richer about creating a new company which would deal in products related to the books, such as puzzles. Power offered to include Morales as a part owner and have her work for the puzzle company. Since they were both going away for the holidays, Power suggested that he and Morales “regroup” in early-January. Power stressed to Morales that “you’re out” as publicist, but could perhaps do something different. Power said he would try to contact Morales while he was on vacation in Mexico if the connection was good. (Tr. 157–163, 167, 207)

⁸ Power testified that his WhatsApp chat with Avellan occurred on November 24. (Tr. 147–150) Although the exhibit reflects that the chat started on November 24, it apparently resumed on December 19. (R. Exh. 10) This would explain why Power mentioned certain tasks that Luckman referenced in the list of responsibilities he provided in early-December. Power told Avellan that Luckman “made it appear like a lot. Like fucking deleting spam and sorting emails.” Power also stated in the December 19 chat that “Will [was] out next week I think.” As discussed below, Power talked to Luckman about removing him from his position a little over a week later. (R. Exh. 10)

⁹ Although Morales testified on rebuttal that she expected to continue performing public relations work on a few titles, she did not indicate what Power said to make her believe this. I do not find that Power expressed such an intention. I note that, as discussed below, Luckman testified that Morales told him Power said he “was going to move her off of PR work.” (Tr. 37–38)

After Morales met with Power, she spoke to Luckman about the conversation. Luckman testified that Morales said Power “was going to move her off of PR work and try to get her to be . . . producing puzzles . . .” Luckman learned from Morales that Power confirmed he was restructuring the company and was considering switching Morales to an independent contractor. According to Luckman, they discussed the possibility of forming a union in order to file grievances and dispute what their roles would be with the company. Morales testified that they discussed the possibility of forming a union so they would be able to negotiate their terms and conditions of employment. (Tr. 37–38, 90)

On December 28, Power sent Luckman an email with the subject, “the future,” and requested that they meet. (G.C. Exh. 5)

On December 29, Power and Luckman met at Power’s Industry City bookstore. Luckman’s testimony regarding the meeting can be summarized as follows: Power confirmed that he was planning to restructure the company and told Luckman he had too much on his plate. Power said he would give some of the production tasks Luckman had taken on since Cohen left to freelance independent contractors who were already doing design and production work. Power told Luckman he would be switched back primarily to editorial work and specifically mentioned a project Luckman could work on through the spring. Power said, at that time, they would discuss how this new structure was working and reevaluate. At some point, Power said that Luckman had been insubordinate, but did not explain in what way. (Tr. 38, 216)

Power’s testimony regarding the December 29 meeting with Luckman can be summarized as follows: Power told Luckman, “your job is over” at the end of the year because Luckman did a terrible job that fall in production and a worse job in editorial. Power mentioned the copyrights, customs issue, a problem Luckman had with a \$25,000 author buyback, and the improper stickering of a book. Power noted that Luckman was having these problems even though the company was only publishing a handful of books. Power said, “I’m done.” Power told Luckman he did not belong in management or production, but offered Luckman work as an editorial “sculptor.” Power said he had two books which required a sculptor and one of those right now. Power said the work would be freelance and Luckman would not be on the payroll or report to him. Power told Luckman he could spend “a month or two” putting the book together. Luckman said that “sounds great” and was “awesome.” Luckman asked whether, after the book was done, he could go back to being an editor for the Respondent. Power responded, “we’ll see.” Throughout the meeting, Luckman had a strange smile on his face and kept saying “great.” Power said he would try to contact Luckman from Mexico if the connection was good. However, Power told Luckman that they would touch base when he returned from vacation. (Tr. 163–167) Following his direct examination, Power testified that he told Luckman, “You’re out, I’m taking away all your production work, giving it to someone else who I hope can do a better job, and we don’t have editorial so we don’t need you. I’m tired of this, and if you want there is something that we can think about regarding a special project.” (Tr. 208) Power specifically denied that he told Luckman he would be doing editorial work beyond that project. (Tr. 213)

On December 29, Floressantos and Power exchanged the following emails (G.C. Exh. 17):

Floressantos: Today SK sent me a message mentioning that I would be starting doing publishing work in the new year. I remember that you told me I would be starting that role in the new year in November, but I just wanted to go over some logistics with you about it. On what date would you like me to start? I saw that I am not scheduled to work in the bookstores after Jan 5, so does that mean I start on the 6th? What kinds of things would you expect of me to do in the role and will

Madison be training me to carry out the tasks to the highest quality possible? Will I be working in the office space or from home and what will my hours be? How will my pay rate be affected? Those are just some of the questions I have on my mind for now. Let me know if you need anything from me to make the transition easier and I'll get it to you as soon as possible!

Power: Still working things out with person whose tasks you will start taking over. It will be gradual, but you will start taking over some editorial work and that learning curve soon, as soon as I discuss with that person later today, and then start taking over POW-related PR stuff, and that person will be teaching you as I outlined to her last night. You will eventually take over her responsibilities completely, once I can get a new project going in early 2021, so most of January will be learning and assisting, and practice runs so to speak, with eventual autonomy after a month or so. Eventually you will work out of office in IC, and we will get that set up in January, so that will be M-F 10-6; this salary will be different than the store, so if you want extra hours for store on weekend you can do that if you want. I am thinking of having you spend half a day during each week day learning the tasks, and other half working in store, I have to circle back to management on that as I am crushing deadline before end of year. Madison will get you started with procedures of how we do PR for POW, the schedules, the workflow, the outreach, etc. She will also show you how to make author invoices, primarily for author copies at their discount and how to handle shipping, and introduce you to distributor and do tutorial on portal. Will will teach you how we file for copyright and submitting samples to the LOC.

On December 30, Luckman and Avellan exchanged the following emails (G.C. Exh. 6):

Avellan: Hey Will. So Dan's given me a list of new responsibilities. I asked him yesterday if we could zoom so he explain to me how the workflow is supposed to go, but he referred me to you. So can we zoom? Do you know about this?

Luckman: He just told me yesterday you're going to be taking over production. I'm still working on a guide and pulling together resources. So let's table it for now, and we can talk early next week and I'll pass materials to you and start walking you through stuff then.

Avellan: ok. Great thanks. not sure about taking over production. He said I would pick up some communications and trafficking duties, but lets talk when your ready.

On December 30 and 31, Luckman worked and performed his normal duties.¹⁰ (Tr. 40)

On January 1, 2021, Power left for vacation to Mexico. Power testified that he did not have access to wi-fi where he was staying, but could occasionally use his phone with cellular service and had limited functionality in certain locations. Thus, he could read his emails, but could not open attachments to those emails. (Tr. 167–168)

¹⁰ Apparently, Morales left for vacation on December 29. (Tr. 158)

On January 3, 2021, at 10:02 a.m., Floressantos replied to Power's December 29 email (above) as follows (G.C. Exh. 17):

5 I wanted to check in with you again before the start of this next pay period and schedule. Should I come in on Wednesday into the office at 10 AM and work a half day there and half day in the store? I'll bring my laptop and charger as well as my iPad to take any notes.

10 At 8:34 p.m. the same day, Power responded to Floressantos as follows and included Morales and Konig, as recipients (G.C. Exh. 17):

15 Let's start on Monday and you and Madison on phone getting to know the S&S portal and PR workflow for POW! You two should zoom tomorrow and as needed rear of week. Will meld this with store work till I am back.

Union Activity and Discharge of Luckman and Morales

20 On January 3, 2021, Morales (at 2:30 p.m.) sent an email to Luckman and Luckman (at 5:18 p.m.) sent an email to himself. Both these emails stated, "I authorize Book Workers United to represent me for the purpose of collective bargaining with my employer." (G.C. Exhs. 7-8)

25 On January 3, 2021, at 5:39 p.m., Luckman sent Power an email attaching three NLRB forms, including a draft representation petition. At 5:48 p.m., Power responded by email, "The fuck is this[?]" (G.C. Exh. 9) Power testified that he "figured it was a lawsuit," but he could not open the attachments because his cellular connection was insufficient. He did not know the details of the attached documents, but suspected from the titles that Luckman and Morales were trying to form a union. (Tr. 169-170)

30 On January 4, 2021, the petition was filed in case 29-RC-271113. The petition sought an election in a unit which included the "Managing Editor; PR associate." (G.C. Exh. 1(C))

35 That same day, on January 4, 2021, Luckman and Morales realized they did not have access to their work email accounts. (Tr. 45-48, 93-94) At 9:36 a.m., Luckman texted Power and Morales, "Daniel, Madison and I can't access our email this morning. Did you change the password?" Power responded, "I am changing things. Both of you compile list of company assets in your possession, documents, hard drives, equipment and share via Google drive. Also your contacts for main activities. I will be in touch via phone later today." At 9:53 a.m., Luckman texted Power and Morales, "Completed. Still both locked out of email, so let us know if there is
40 other work we can complete." (G.C. Exh. 10)

On January 5, 2021, at 12:36 p.m., Luckman used his personal Gmail account to email Power, copying Morales on her personal Gmail account, as follows (Tr. 48) (G.C. Exh. 11):

45 A reminder and request.

Reminder: Madison and I are at our workstations awaiting email access and assignments

Request: We have not been paid for work completed in the month of December. Please pay us for time worked ASAP.

That same day, January 5, 2021, Power called and spoke separately with Luckman and Morales. Luckman testified that Power began the conversation with him by stating that the Respondent was no longer a payroll company and “there would be no union.” According to Luckman, Power told him he could do editorial work as an independent contractor or train Avellan for a couple of weeks as his replacement and receive a small severance package in return. Luckman asked Power to send him the offer in writing. (Tr. 49–50)

Morales testified that, when she spoke to Power on January 5, 2021, he said she could train Floressantos up to a month as her replacement and receive severance or remain as a contract worker with new responsibilities. Power told Morales he would send her written notice of what they had discussed in this regard. Power asked Morales whether she was involved in the union with Luckman, and she answered, “yes.” Power then asked Morales what she “was trying to get out of this?” Morales refused to answer the question and told Power she would not speak to him further or directly regarding the situation. (Tr. 95)

Power testified that Luckman and Morales were cagey when he spoke to them on January 5, 2021. According to Power, he said to Morales, “Will sent me something, I don’t know what it is? Do you know what it is?” Power testified that Morales said, “you’ll find out.” Power testified that he asked Luckman the same question and he said, “you’ll see.” However, having seen the titles of the attachments, which included the word “petition,” Power allegedly asked, “were you guys trying to form a union?” According to Power, neither Luckman nor Morales would answer the question. (Tr. 169–170)

In a text message to Morales, Luckman described what Power said to him over the phone on January 5, 2021, as follows (G.C. Exh. 12):

- powerHouse Cultural is no longer a company
- if I’m willing to train someone for two weeks I will get severance
- He will send an email with this info
- December will be paid
- No more payroll at powerhouse, “no union”
- He will send an email where to share my info

Luckman then asked Morales what Power said to her, and she texted, “All same.” (G.C. Exh. 12)

Power testified that he was able to open the January 4 email attachments when he left his hotel and went into town to use wi-fi. According to Power, his reaction when he was able to open the documents was, “you got to be kidding me. . . . I told them their jobs over and now they think forming a union is going to save their jobs. You know, I didn’t get it. I didn’t think that was possible.” (Tr. 171) Power further testified that he thought, “we’re no good for each other and then they would file a petition to . . . become, you know, shackles around my neck in terms of staying on.” (Tr. 168–171, 187–188)

On January 6, 2021, Power sent emails to Luckman and Morales with attached documents describing his proposal. (G.C. Exh. 13–14, 18) The email attachment to Luckman was titled “services contract-Will” and read as follows (G.C. Exhs. 13–14):

As of Jan 1, 2021 you are no longer employed by powerHouse Cultural Entertainment, Inc. (the company). Any work you may perform on behalf of

PHCE from this date forward, if agreed by both parties, will be contract services invoiced by you or your company, with tasks performed by you or your designate at a location of your choosing, and if mutually agreed, a company location if convenient. No such work will be construed as an employment contract, but a service agreement; any and all work will not be in an official capacity or title, but rather in support roles for those with official capacity and title.

Unless otherwise specified or altered at a later date, all company contacts, materials, equipment, documents, portal access links, passwords, and any and all property provided you or authorized for you to use will be returned to the company by January 12, at a location (for physical material) to be provided; digital assets will be turned over via Dropbox or Google Drive.

If you do not wish to continue in a service contract, you will be given a severance package at the end of January provided you assist in the passing of your tasks to newly appointed representatives of the company, and remain available for questions during this month. You will not be required to establish new work flows, or perform tasks associated with them; you may be asked to review what has been done during this time or review before implementation. The severance package will be at least one month of salary plus healthcare.

Should you be interested in a two month or three month service contract, you will be tasked with new initiatives that should be more to your liking or temperament, and very likely for your CV. You will continue to act in a review capacity for new representatives, but will not be asked to contribute materially to old workflows, unless that is something you really want to do, and mutually agreed. This time period will allow you and company to assess whether company objectives are being attained, and satisfaction goals for yourself are being met. It can continue after that, as is or modified if mutually agreed to. I am proposed current salary plus 7.5% for self-employment tax, invoiced by you or by your company. There is a budget I have in mind, so it can't be open ended.

Your December payroll has been posted, and your 401k contributions have been processed (each of you some \$1200 or so). While January has been covered for healthcare, you will need to sign up for Cobra at your expense starting February 1, or look elsewhere if you desire. You will also need to relocate your 401k away from the company plan, as that plan is shutting down (speak with investment specialist, but SEP IRA should be easy to convert). You should transfer soon if you do not want management fees assessed, as I have neglected to do so for the past 11 years.

For Will: Robert should be brought up to date on existing books in production, share contacts with, and he should be ready to go. Then start on Pellington MS and provide reader report, and we talk about what needs shaping and how to get a handle on visuals he has. Ditto on Ginsberg. Two-three months should be adequate, but we evaluate once you start. Side proofing projects are also a possibility as are straightforward research projects on licensing.

The email attachment to Morales was identical except for the last paragraph, which read as follows (G.C. Exh. 18):

For Madison: Getting Genessee up to speed on POW!, and we can discuss you handling pH if that is truly a passion thing for you; but it would have to be freelance and per project. No author servicing. Possible independent sales support, as in sales rates and reprint recommendations. Research into new business line and starting the solicitation of IP, and editorial selection with FR of content for production. Involved in distribution research and implementation. Could lead to position within a new entity. A satisfactory treatment for mental health would be required, and company could help with that.

Neither Luckman nor Morales responded to accept one of the proposals to continue working for the Respondent, either as independent contractors with new responsibilities or on a temporary basis training their replacements in exchange for severance. (Tr. 54, 97)

On January 6, 2021, Power ran the monthly payroll for December. Morales and Luckman were both paid for December, but were not paid for any time worked in January 2021. Power testified that he did not pay Luckman or Morales for January 3 or 4, 2021 because they were not employed on those days. (Tr. 210–212)

On January 11, 2021, Power and Luckman exchanged emails, copying Morales, regarding whether the employees wanted to keep their health insurance under COBRA. (G.C. Exh. 16) Power indicated that the health insurance policy would be cancelled if the employees did not elect COBRA. Luckman indicated that he would need coverage for January 2021, but would switch to a state exchange policy thereafter. Luckman asked whether the Respondent already paid health insurance for January 2021. Power responded, “I will pay it if you give me 6 hours of help in January, maybe less. Same for MM . . .” Luckman declined that offer. However, when Luckman attempted to register with the New York health exchange, he learned that he still had his health insurance from the Respondent through January 2021. (Tr. 59–60)

On January 11, 2021, Luckman contacted Tanvir Ahmed and asked whether Power informed Ahmed that Luckman and Morales were being discharged. Ahmed performed certain accounting services for the Respondent. Ahmed said Power did not tell him that Luckman and Morales were being discharged. (Tr. 54–57, 117–118) (G.C. Exh. 15)

Power testified that he kept Floressantos, Ahmed, and Richer on the payroll in January and February 2021. (Tr. 175, 190–191)

CREDIBILITY

The record in this case does not contain many significant factual disputes and it was my general impression that all the witness attempted to answer questions honestly. It appeared that, to the extent witnesses provided testimony which was not entirely consistent, this was because they focused on and recalled what was important to them.

I credit Luckman and Morales regarding Power’s January 5, 2021 comments which are the subject of the 8(a)(1) allegations. Power did not specifically deny the comments. I note that Luckman texted Morales after the conversations and indicated that Power said, “No more payroll at powerhouse, ‘no union.’” This corroborates Luckman’s testimony that Power told him “there would be no union.” I also credit Morales to the extent she testified that Power asked her whether she was involved in the union with Luckman and what she was trying to get from it. Power testified that he was perplexed and did not think it was possible for the employees to save their jobs by unionizing. (Tr. 171) Therefore, it stands to reason that Power would ask Morales what she “was trying get out of this?” Power also admitted that he asked Luckman and

Morales what the January 3 email attachments were and “were you guys trying to form a union?” (Tr. 169–170) There is little difference between this description of the conversation and Morales’ testimony that Power asked her whether she was involved in the union with Luckman.

5 Nevertheless, Morales appeared, in her demeanor, more certain of the specific language and, as the conversation concerned her continued employment, her attention to the language may have been more acute.

10 With regard to the December 28 and 29 meetings at Industry City, I credit Power to the extent he testified that he told Luckman and Morales that their jobs were “over.” Power was credible in testifying that he decided upon this course of action before he entered the meetings and wanted to communicate that message. I can understand why Luckman and Morales may not have focused on the comment as Power also offered them continued work and otherwise sought to deemphasize the negative implications of the meetings. With regard to the remainder
15 of the late-December meetings, I generally rely upon the testimony of Luckman and Morales because I would not find an 8(a)(3) violation even if the two employees are credited.

ANALYSIS

20 UNFAIR LABOR PRACTICES

8(a)(1) Allegations

Statement of Futility

25 The General Counsel contends that the Respondent, on January 5, by Power, violated Section 8(a)(1) of the Act by informing employees that “there would be no union” and, thus, that it would be futile to select a union as their bargaining representative. Here, Power made the comment while advising Luckman that the Respondent would no longer function as a payroll
30 company and that Luckman could continue working as an independent contractor or receive a severance package after training his replacement. Power sent Luckman an email the following day which confirmed and expanded upon this proposal.

35 The question here is whether the statement by Power was coercive or a reasonable prediction based upon an accurate understanding of the facts and law. See *Intermodal Bridge Transport*, 369 NLRB No. 37 (2020) (employer statement that union “wasn’t going to happen” was a lawful prediction and expression of opinion under 8(c) that a union campaign would not succeed; not an unlawful statement of futility). The original petition sought a unit of “Managing Editor; PR Associate” – i.e., Luckman and Morales. Thus, if the two employees agreed to the
40 Respondent’s proposal that they continue working as independent contractors and transitioned to such status, there would be no employees in the unit and “no union.”

45 A close review of the documents Power sent Luckman and Morales on January 6, 2021 is helpful to resolve this issue. On January 6, 2021, Power emailed the employees documents which began, “you are no longer employed by powerHouse Cultural Entertainment, Inc.” and “[a]ny work you may perform on behalf of PHCE from this date forward, if agreed by both parties, will be contract services invoiced by you or your company” The documents further stated, “[n]o such work will be construed as an employment contract, but a service agreement” This language reflects Power’s intention to retain Luckman and Morales as independent contractors *if* they agree to such status. However, the documents further state, “[i]f you do not wish to continue in a service contract, you will be given a severance package at the end of January provided you assist in passing your tasks to the newly appointed representatives of the company, and remain available for questions during this month.” Thus, this proposal appears to

contemplate that the Respondent would retain Luckman and Morales as employees for a month if they rejected independent contractor status and trained their replacements. Power made the same verbal offer to Luckman and Morales on January 5, 2021.

As I understand the January 6, 2021 proposals, the Respondent essentially set forth three options: (1) Luckman and Morales would perform certain work as independent contractors for an indeterminate period of time; (2) Luckman and Morales would be retained as employees through January 2021 to train their replacements and receive a severance package at the end of the month; or (3) Luckman and Morales would no longer work for the Respondent. If the employees chose options 1 or 3, Power would be correct in stating that “there would be no union.” However, if the employees chose option 2, Power’s statement would not necessarily be accurate as the representation petition could have been processed to an election in January 2021 and the union could have been certified for purposes of collective bargaining. Although the duration of that representation might have been short-lived, the employees had a legitimate reason to want to bargain collectively regarding such issues as the length of their employment and the terms of the severance agreements. Indeed, the fact that the employees’ employment was in flux was a reason they might want to unionize.

A definitive and potentially incorrect statement by the owner that “there would be no union,” could lead reasonable employees to believe that unionizing was futile and dissuade them from exercising their Section 7 rights or dissuade them from retaining employment with the Respondent at all. See *Concrete Co.*, 336 NLRB 1311 (2001) (successor violated Act by informing predecessor employees “there’s no union; the Union’s gone”); *W & M Properties of Connecticut, Inc.*, 348 NLRB 162, 163 (2006) (unlawful to inform an employee that if he accepted a job it would be nonunion). Here, Luckman and Morales selected option 3 (i.e., to forgo work with the Respondent). The statement in question could have contributed to that decision.

Based upon the foregoing, I find that the Respondent, by Power, violated Section 8(a)(1) of the Act by informing employees that “there would be no union” and, thus, that it would be futile to select a union as their bargaining representative.

Interrogation

The General Counsel contends that, on January 5, 2021, the Respondent, by Power, violated Section 8(a)(1) of the Act by interrogating employees regarding their union activities. Specifically, during a phone call, Power asked Morales whether she was involved in the union with Luckman, and she answered, “yes.” Power then asked Morales what she was trying to get out of it, but Morales refused to discuss the matter.

Under the Board’s “totality-of-the-circumstances test set out in *Rossmore House*[, 269 NLRB 1176, 1177–1178 & fn. 20 (1984), *affd. sub nom. Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985),” the “[c]ircumstantial factors relevant to the analysis include the background against which questioning occurred, the nature of the information sought, the identify of the questioner, the place and method of interrogation, the truthfulness of the employee’s reply, and whether the employee involved as an open and active union supporter.” *Kumho Tires Georgia*, 370 NLRB No. 32, slip op. at p. 6, fn. 14 (2020)

I find, in considering the totality of the circumstances, that the Respondent violated Section 8(a)(1) of the Act as alleged. The RC-petition Luckman emailed to Power on January 4, 2021 described the unit as including the “Managing Editor; PR

Associate.” Morales was “involved in the union” as a potential unit member. Thus, it could be argued that Power was not seeking to expose anything that was not apparent from the petition in asking Morales whether she was involved in the union with Luckman. However, the extent of Morales’ involvement was not obvious. Power’s follow-up question regarding what Morales wanted to get from unionizing could expose the extent of her involvement. Morales was apparently uncomfortable with the question as she refused to answer. That the questions were also posed by the owner with authority to take adverse employment actions against Morales (and had already proposed the same) would add to the coercive nature of the questioning. Finally, Power posed these questions to Morales while telling Luckman “there would be no union.” Luckman communicated this coercive comment to Morales by text which indicated that Power said, “no more payroll at powerhouse, ‘no union’.” This unlawful contemporaneous comment would tend to render Power’s questioning of Morales more intimidating.

Based upon the foregoing, I find that the totality of the circumstances rendered Power’s interrogation of Morales impermissibly coercive and a violation of Section 8(a)(1) of the Act. See *Fuelgas Co., Inc.*, 259 NLRB 801, 803 (1981) (employer unlawfully asked employee what he “would get out of the union” where employer also said, “the union wouldn’t get in” and urged the employee “to be sure to vote no for the union”).

8(a)(3) Allegation

The General Counsel contends that, on January 6, 2021, the Respondent discharged Luckman and Morales because of their union activities.

Under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982), “the General Counsel must prove that antiunion animus was a substantial or motivating factor in the employment action. If the General Counsel makes the required initial showing, the burden then shifts to the employer to prove by a preponderance of the evidence that it would have taken the same action even in the absence of employee union activity.” *Baptistas Bakery, Inc.*, 352 NLRB 547, 549, fn. 6 (2008). The elements of the General Counsel’s initial burden “are union or protected concerted activity, employer knowledge of that activity, and union animus on the part of the employer.” *Auto Nation, Inc.*, 360 NLRB 1298, 1301 (2014). The General Counsel’s prima facie case requires proof that the employer was aware of an employee’s union activity before it made the decision to discharge that employee. *Stevens Creek Chrysler Jeep Dodge, Inc.*, 357 NLRB 633, 634-635 (2011)¹¹ enfd. 498 F.Appx. 45 (D.C. Cir. 2012).

Here, the General Counsel failed to establish that Luckman and Morales engaged in union activity before Power made the decision to discharge them. On November 23, Power and Luckman had an angry exchange about the customs issue. Power testified that he made the decision to terminate Luckman and Morales that day. Power also spoke to Floressantos on November 23 about working in publicity. On November 24, Power told Avellan, “I have an idea, about firing Will” and was “gonna get rid of Madison too.” Power’s statement regarding his plan to discharge Morales appeared to be definitive and unqualified. Power’s initial statement at the start of the November 24 chat with Avellan regarding Luckman’s termination was slightly less certain (i.e., he had an “idea” about firing Luckman). However, Power made immediate

¹¹ In *Stevens Creek Chrysler Jeep Dodge, Inc.*, 357 NLRB 633 (2011), the Board incorporated by reference the two-member decision reported at 353 NLRB 1294 (2009).

arrangements with Avellan and Richer to assume Luckman's production work. In early-December, when Power received from Luckman and Morales the lists of their tasks, it confirmed that, in his opinion, the employees were wasting a great deal of time. By December 19, when
 5 Power messaged Avellan again, Power's decision to remove Luckman appeared to be confirmed. Power told Avellan that "[Luckman] goes as soon as you are ready." Avellan indicated he was "ready whenever." Power offered to increase Avellan's pay and they agreed to "start with this salary in Jan." (R. Exh. 10)

10 The General Counsel contends that the timing of events proves that the Respondent terminated Luckman and Morales because of their union activities. I disagree, as it was the employees who dictated the timing. Power made the decision to discharge the employees in November and brought the matter to a head when he spoke to Luckman and Morales on
 15 December 28 and 29. As discussed below, the evidence does not indicate that the Respondent changed or accelerated its plans for Luckman and Morales after Power learned, in early-January 2021, that the employees were attempting to unionize. Rather, Luckman and Morales reacted to their meetings with Power in late-December by attempting to unionize at a time when changes to their employment were already imminent.

20 The events in December and January 2021 do not establish that Power altered his plans regarding Luckman and Morales after they decided to unionize. During his late-December meetings with the employees at Industry City, Power indicated that he was removing them from their current positions, but would allow them to continue working in different capacities. Power also indicated that he wanted to transition Luckman and Morales to independent contractors.
 25 Power followed through on this plan when he made Luckman and Morales such offers on January 5 and 6, 2021. Power did not deviate from this plan in a manner that disadvantaged the employees after they attempted to unionize.¹² If, after receiving the RC-petition, Power suddenly told Morales she could not train Floressantos or work in the puzzle company as they discussed on December 28, it would have suggested that Power changed his mind about
 30 retaining Morales in that capacity because of her union activity. If Power suddenly told Luckman he could not perform the editorial project they discussed on December 29, it would have suggested that Power changed his mind about retaining Luckman in that capacity because of his union activity. This did not happen.

35 Just as the record does not indicate that the Respondent changed its plan for Luckman and Morales once Power learned of their union activity, the evidence does not indicate that the Respondent expedited its plan for the employees after Power learned of their union activity. Power testified that he wanted to make changes in 2021 and told Avellan, "we start with this
 40 salary in Jan." Power never indicated that he intended to wait longer than early-January 2021 before restructuring the company and transitioning Luckman and Morales to independent contractors or discharging them.

The General Counsel notes that Power did not expressly tell Luckman and Morales that

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¹² In the last paragraphs of the proposals Power sent Luckman and Morales on January 6, 2021, the Respondent appeared to offer the employees more work than they discussed in December. This suggests that the Respondent did not seek to eliminate or reduce the work available to the two employees after they attempted to unionize.

they were “discharged”¹³ or place them on notice that their performance was lacking. However, the Respondent was under no legal obligation to do so and these assertions are not factually accurate. In November and December, Power articulated his desire to remove the employees from their current positions and made arrangements to replace them. Luckman and Morales both admitted they had disputes with Power regarding their performance and written communications between Power and the employees confirmed the same. Indeed, Power and Luckman had a significant argument regarding the customs issue on November 23, the day before Power told Avellan he intended to discharge Luckman and Morales. The Respondent did not have a practice of issuing more formal written discipline and, therefore, the absence of the same does not suggest that Power did not intend to discharge the employees before they attempted to unionize.

The General Counsel relies heavily on the fact that, on January 3, 2021, Power asked, “the fuck it is this[?],” in response to his receipt of the RC-petition, and abruptly removed email access of Luckman and Morales. I agree that Power initially had a hostile knee jerk reaction to the union activity of these employees. The 8(a)(1) violations discussed above also suggest that Power possessed some antiunion animus. However, these facts do not cure the fatal defect in the General Counsel’s case. Power did not act upon any animus he may have harbored toward Luckman and Morales as a result of their union activity by deviating from his preexisting plans for them after they engaged in such activity. Rather, Power merely followed through on the plans he had for the employees before they attempted to unionized.

In light of the foregoing, regardless of how this case is framed within the *Wright Line* analysis, the Respondent cannot be found to have violated the Act. The General Counsel did not establish a prima facie case since the evidence demonstrates that the Respondent made the decision to remove Luckman and Morales from their current positions and transition them to different work as independent contractors before they engaged in any union activity. *Stevens Creek Chrysler Jeep Dodge, Inc.*, 357 NLRB 633 (2011). However, even if it were somehow determined that the General Counsel established a prima facie case, the Respondent established an affirmative defense. Since the Respondent made certain plans for Luckman and Morales before they engaged in any union activity, it cannot be successfully argued that the Respondent would have done anything differently if the employees had not attempted to organize. Accordingly, I find that the Respondent did not violate Section 8(a)(3) and (1) of the Act by discharging Luckman and Morales.

REPRESENTATION CASE – CHALLENGED BALLOTS

Having found that the Respondent lawfully discharged Luckman and Morales on January 6, 2021, I shall sustain the Respondent’s challenges to the ballots of those two employees. As reflected in the stipulated election agreement, employees are ineligible to vote if they quit or were discharged for cause after the eligibility payroll period. Luckman and Morales were both discharged for cause on January 6, 2021.¹⁴ Accordingly, Luckman and Morales were not

¹³ Power did not necessarily intend to completely or immediately separate Luckman and Morales. Power asked them to train their replacements and offered them additional work as independent contractors.

¹⁴ Other than to determine whether an employee voter was discharged in violation of the Act, the Board does not evaluate, on the merits in the nature of a grievance arbitration, whether a challenged voter was actually discharged “for cause.” *Dura Steel Prod. Co.*, 111 NLRB 590, 591-592 (1955). Rather, it is presumed that the employee voter was discharged for cause. *Id.*

eligible to vote and I will sustain the challenges to their ballots.

CONCLUSIONS OF LAW

1. The Respondent, Powerhouse Cultural Entertainment, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent, on January 5, 2015, violated Section 8(a)(1) of the Act by informing employees that "there would be no union" and, thus, that it would be futile to select a union as their bargaining representative.

3. The Respondent, on January 5, 2015, violated Section 8(a)(1) of the Act by interrogating employees regarding their union activities.

4. The Respondent did not, on January 6, 2021, violate Section 8(a)(3) and (1) of the Act by discharging employees William Luckman and Madison Morales. This complaint allegation is dismissed.

5. The unfair labor practice committed by the Respondents affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. Luckman and Morales were not eligible to vote because they were discharged for cause on January 6, 2021. The Respondent's challenges to the ballots of Luckman and Morales are sustained.

THE REMEDY

Having found that the Respondent, Powerhouse Cultural Entertainment, Inc., engaged in unfair labor practices, I shall order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent unlawfully interrogated employees regarding their union activity and unlawfully informed employees that organizing was futile, I will require the Respondent to post the standard notice at its facility advising employees of this decision and order.

My order will also provide that the representation case, 29-RC-271113, be remanded to the Regional Director for Region 29 with directions to exclude the challenged ballots of Luckman and Morales and certify the results of the mail ballot election.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended¹⁵

ORDER

The Respondent, Powerhouse Cultural Entertainment, Inc., Brooklyn, New York, its

¹⁵ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Informing employees that it would be futile to select a union as their bargaining representative.

(b) Interrogating employees regarding their union activities.

(c) In any like or related manner interfering, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

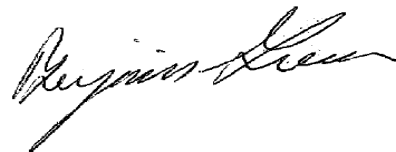
2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Brooklyn, New York facility, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, copies of the notice to all current employees and former employees employed by the Respondent at any time since January 5, 2021.

(b) The representation case, 29-RC-271113, shall be remanded to the Regional Director for Region 29 to further process that case and count the ballots of the mail ballot election. In conducting that count, the ballots of Luckman and Morales will be excluded as those employees have been determined to be ineligible to vote. Once the count is complete, the Regional Director shall certify the results of the election.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: Washington, D.C., August 10, 2021



Benjamin W. Green
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT inform employees that it is futile to select a union as their bargaining representative.

WE WILL NOT interrogate employees regarding their union activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed you by Section 7 of the National Labor Relations Act.

Powerhouse Cultural Entertainment, Inc.
(Employer)

Dated: _____ By: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov

100 Myrtle Avenue, Suite 5100, Brooklyn, NY 11201-4201
(718) 330-7713, Hours: 9 a.m. to 5:30 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/29-CA-271135 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (212) 264-0300.